IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WA.No. 2574 of 2007

(AGAINST THE JUDGEMENT IN WPC.26923/2007 Dated 25/09/2007)

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APPELLANT/ PETITIONER:

MUSTHAFA,
AGED 32 YEARS,
S/O.MAYINKUTTY,
RESIDING AT KOONATHIL HOUSE,
THRIKKANAPURAM,
KUTTIPURAM P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.B.SURESH

RESPONDENTS/RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
   MALAPPURAM.

2. THE TAHSILDAR,
   PONNANI,
   MALAPPURAM.

3. THE THAVANNUR GRAMA PANCHAYATH,
   REPRESENTED BY ITS SECRETARY,
   AYANKALAM, KUTTIPURAM,
   MALAPPURAM.

BY GOVERNMENT PLEADER SRI.M.P.SREEKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A. No.2574 of 2007

Dated this the 29th day of October, 2007.

J U D G M E N T

Sankaran, J.

The appellant challenges the judgment of the learned Single Judge in W.P.(C) No.26923 of 2007 by which the learned Single Judge rejected the challenge against Ext.P4 order dated 21-8-2007 passed by the District Collector, Malappuram.

(2). On 13-6-2007 at 4 P.M., the Tahsildar, Ponnani seized the vehicle belonging to the petitioner, KL-8G-4348, on the ground that sand was being unauthorisedly transported in violation of Sec.23 of the Kerala Protection of River Banks & Regulation of Removal of Sand Act, 2001 and Rule 27(1) of the Rules framed thereunder. The Tahsildar prepared Ext.P3 mahazar indicating that sand was being unauthorisedly transported. In Ext.P3 mahazar it is also noted that, at the time of taking custody of the vehicle, the driver was not having any badge or licence.

(3). The District Collector, who is the authority to pass orders under the Act passed Ext.P4 order dated 21-8-2007 holding that the petitioner is liable to pay a sum of Rs.25,000/- as fine and another sum of Rs.50,000/- towards value of the vehicle instead of confiscation. Before the District Collector, the petitioner admitted that the sand was being transported without valid pass. Taking a lenient view of the matter, the District Collector fixed a sum of

Rs.50,000/- as value of the vehicle under Rule 27 (3) of the Protection of River Banks and Regulation of Removal of Sand Rules, as a ground for return of the vehicle to the owner, namely, the petitioner. Though Rule 27 (3) stipulates that the vehicle may be returned if the owner of the vehicle or the possessor remits an amount towards River management Fund equal to the price fixed by the District Collector with fine within seven days from seizure, a very lenient view was taken by the District Collector while fixing the amount payable.

(4). As stated earlier, challenging Ext.P4 order, the writ petition was filed. The petitioner contended before the learned Single Judge that Ext.P4 order is beyond the powers of the District Collector as held in ***Moosakoya Vs. State of Kerala (2005 (4) KLT 331***), wherein this Court took the view that District Collector has no jurisdiction to confiscate the vehicle on finding that the vehicle was being used for unauthorised transportation of river sand. The decision in *Moosakoya's case* was overruled by a Division Bench of this Court in the case of ***Alavi, P.K. Vs. District Collector (ILR 2007 (4) Ker 221)***. Therefore, the ground on which the petitioner contended that Ext.P4 is without jurisdiction is not sustainable now.

(5). The learned counsel for the petitioner raised a contention that the petitioner was having a pass permitting him to transport sand on 13-06-2007 between 8.45 A.M and 12 noon and the sand was being transported a few hours thereafter because there was break down of the

vehicle. Such a contention was not put forward either before the District Collector or in the writ petition. For the first time, such a contention is raised in one of the grounds in the writ appeal as under:

> *"While it is correct that the appellant ought to have transported sand within 12 noon. The break down of his vehicle which is force major condition prevented him from accomplishing an authorised task within the time granted."*

(6). No factual details are provided even in the writ appeal to come to the conclusion as to whether there was actual break down of the vehicle making it impossible for transportation of the sand before the time fixed in the pass. Moreover, the appellant has categorically admitted before the District Collector that the sand was being transported without valid pass. The appellant having not raised any such contention as is now raised in the writ appeal, before the learned Single Judge, we are not inclined to entertain this ground belatedly made for the first time in the writ appeal, that too, without any factual details.

(7). The contention that the amount fixed as fine and the amount fixed as value of the vehicle is on the higher side is also without substance. The District Collector has taken a very lenient view of the matter and no grounds are made out to interfere under Article 226 of the Constitution. The learned Single Judge was justified in dismissing the writ petition. The writ appeal lacks merits and it is accordingly dismissed.

(8). In view of the order passed in the writ appeal, I.A.No.878

of 2007 is closed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS